No. 83-327

In The

# Supreme Court of the United States

October Term, 1983

DON HALSELL,

*Petitioner,*

*v.*

LOCAL UNION NO. 5, BRICKLAYERS & ALLIED CRAFTSMEN; TEXAS STATE CONFERENCE OF THE BRICKLAYERS & ALLIED CRAFTSMEN; INTERNATIONAL UNION OF BRICKLAYERS & ALLIED CRAFTSMEN,

*Respondents*

## RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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### RESPONSE TO JURISDICTIONAL STATEMENT

Although jurisdiction has been technically invoked pursuant to 28 U.S.C. § 1254(1), it is Respondents' position, as argued below, that no adequate reason has been shown for the Court to grant certiorari. The decision of the Fifth Circuit is not actually in conflict with decisions of the Supreme Court or any other circuit. The petition for certiorari should therefore be denied.

## STATEMENT OF THE CASE

Respondents cannot agree to Petitioner's statement of the case. Therefore, Respondents would submit the following statement of the case:

Halsell, at the time a member for more than twenty-five (25) years of the Bricklayers & Allied Craftsmen ("BAC") was asked in the summer of 1977 to teach a bricklaying class at Skyline High School in Dallas, Texas. The class was sponsored by a group of non-union contractors and the students included employees of the non-union contractors. None of the students were regularly indentured to the international union. Halsell agreed to and in fact did teach the open-shop class.

Article X, § 3, Constitution of the Texas State Conference of Bricklayers specifically prohibits a union member from teaching the trade to persons not regularly indentured to the union's apprenticeship program. Halsell had reviewed and was fully aware of this provision at the time he commenced teaching the open-shop apprenticeship class. He was also aware as a result of numerous conversations that the union was opposed to teaching the trade to non-members of the union.

Shortly after he began teaching the class, Halsell was charged by the Dallas local of the BAC with violation of the International Constitution, Code 5, paragraph 1(s), which states:

> It shall be an offense against the International Union . . . for any member . . .

> to commit any act which is seriously detrimental to the interests of the International.

At his union trial, Halsell pled guilty to the charge and was fined $250.00. Halsell appealed the fine without success to the Texas State Conference of the BAC and to the International, then filed suit in the District Court under 29 U.S.C. § 412. Among other things, he contended that the fine violated § 101(a)(5) of the Act because he did not have reasonable **prior** notice that his conduct — teaching a bricklaying class — could subject him to union discipline.

## REASONS FOR DENYING THE WRIT

In his petition, Halsell sets forth two reasons for granting a writ in this case. They will be discussed below.

### A. Petitioner's First Reason

For his first reason Petitioner invites the Court to ignore or reverse this Court's well reasoned opinion in *Boilermakers v. Hardeman,* 401 U.S. 233 (1971). There the Court was confronted with the issue of whether a union could discipline a member for conduct not specifically prohibited by the union constitution without violating § 101(a) of the Labor Management Reporting and Disclosure Act of 1959. In holding in the affirmative the Court made two critical statements:

> 1. [A] union may discipline its members for offenses not proscribed by written

> rules at all . . . [so] it is surely a futile exercise for a court to construe the written rules in order to determine whether particular conduct falls within or without their scope. 401 U.S. at 244-45.
>
> 2. [T]he notice [of the charges against Hardeman], appears to have contained a detailed statement of the facts relating to the fight that formed the basis for the disciplinary action. Section 101(a)(5) requires no more. 401 U.S. at 245 (footnote omitted).

Petitioner, understandably distressed by this language, invites the Court to reverse its long standing opinion based on the argument that Congress did not intend to eliminate the requirement of fair prior notice of prohibited conduct. This is an issue which the Court need not reach in this case.

It cannot be emphasized too strongly that this is not a case in which Petitioner was denied fair prior notice of prohibited conduct. The record is conclusive that Halsell was aware, prior to engaging in teaching, that the State Constitution contained a provision which specifically forbade the conduct in which he engaged. The record is also clear that Halsell had been engaged in an ongoing dispute with his union leadership with respect to teaching the trade to non-union apprentices. Based upon this dispute, Halsell knew full well that the union would not tolerate such conduct. Finally, Halsell's claim that he did not know that teaching

open-shop apprentices was wrong is cast into significant doubt by the fact that he continued to do so after being fined for the conduct.

It is clear, therefore, that Petitioner invites the Court to reach an issue which it need not reach to decide this case. The difficult problem of whether Congress intended to relieve unions of the duty to provide prior notice of prohibited conduct in all conceivable circumstances can and should be reserved for another day. Here, Halsell had prior notice and accordingly the Court need not rule on the hypothetical case where he did not.

Even if the Court were to conclude that Halsell did not have actual notice of the prohibited nature of his conduct, his conduct was such that no notice was required. Even under Petitioner's restrictive view of *Hardeman*, a member who engages in "hardcore" conduct may be punished without prior notice. (Petition for Cert. at 6) Assuming, arguendo, that Petitioner's analysis is correct, "hardcore conduct includes not only serious crimes such as rape and murder but matters as trivial as striking a union business agent" (the conduct involved in *Hardeman*). Therefore, a person not entirely naive about union matters could hardly fail to recognize the "hardcore" nature of Halsell's conduct. Indeed, one can hardly imagine conduct as odious to a union as teaching the trade to the very people who are taking jobs from one's union brothers.

**B. Petitioner's Second Reason**

Petitioner also contends that the Circuit Court's opinion below conflicts with opinions from two other circuits, *Semancik v. United Mine Workers,* 466 F.2d 144, 157 (3d Cir. 1972) and *Perry v. Milk Drivers & Dairy Employees' Union Local 302,* 656 F.2d 536, 539 (9th Cir. 1981). Properly read there is no conflict between these opinions.

*Semancik* is not contrary to the decision below but rather distinguishable from it. Furthermore, *Semancik* does not pretend to follow *Hardeman.* In distinguishing *Hardeman* the Court wrote:

> [11] While it is beyond the province of the courts to scrutinize whether unions may punish members for particular behavior, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith, Forgers and Helpers v. Hardeman, 401 U.S. 233, 244-245, 91 S.Ct. 609, 28 L.Ed.2d 10 (1971), the same prohibitions do not apply to actions involving free speech, the cornerstone of all union democracy. Therefore, whenever a union member is to be disciplined for discussing the fitness of union leaders, their policies or their administration, he may claim the protection of the LMRDA's Bill of Rights.

466 F.2d 144 at 153.

It is, therefore, clear that the *Semancik* court is fully prepared to follow *Hardeman* to the same conclusion as the Court below in cases not involv-

ing free speech. In a case such as this, there would be no conflict.

Similary, *Perry* does not conflict with the decision below. To the contrary, after citing *Hardeman,* the *Perry* court reaches the very same conclusion as the Court below. There is therefore no conflict.

## CONCLUSION

For the reasons cited above, Petitioner has failed to demonstrate any reason for the Court to grant certiorari in this case. The decision below is consistent with those of the Supreme Court and not in conflict with any circuit. Certiorari should therefore be denied.

Respectfully submitted,

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By: .....
Steven B. Thorpe
*Attorney for Respondents*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this document has been mailed to Mr. Stephen F. Fink, 2300 Republic Bank Building, Dallas, Texas 75201, Attorney for Petitioner, on this the 9th 12 day of September, 1983

Steven B. Thorpe

Steven B. Thorpe

1. Opinion of the Court of Appeals

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

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No. 82-1127

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DON HALSELL,

*Plaintiff-Appellant,*

versus

LOCAL UNION NO. 5, BRICKLAYERS & ALLIED CRAFTSMEN; TEXAS STATE CONFERENCE OF THE BRICKLAYERS & ALLIED CRAFTSMEN; INTERNATIONAL UNION OF BRICKLAYERS & ALLIED CRAFTSMEN,

*Defendants-Appellees.*

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**Appeal from the United States District Court**
**for the Northern District of Texas**

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(May 5, 1983)

Before CLARK, Chief Judge, GOLDBERG and POLITZ, Circuit Judges.

PER CURIAM:

AFFIRMED. See Local Rule 21. United Steelworkers of America v. Sadlowski, U.S. , 102 S.Ct. 2339 (1982); International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO v. Hardeman, 401 U.S. 233 (1971).

**2. Opinion of the District Court**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**DALLAS DIVISION**

| | |
|---|---|
| DON HALSELL<br><br>VS.<br><br>LOCAL UNION NO. 5, BRICKLAYERS & ALLIED CRAFTSMEN; TEXAS STATE CONFERENCE OF THE BRICKLAYERS & ALLIED CRAFTSMEN, and INTERNATIONAL UNION OF BRICKLAYERS & ALLIED CRAFTSMEN | CA3-79-0927-C |

## OPINION

Plaintiff seeks to protect rights afforded by our federal labor laws, specifically those contained in 29 U.S.C. § 411(a)(1), (2), (4) & (5).[1] Jurisdiction in this Court is founded upon 29 U.S.C. §§ 185(c) and 412.[2]

[1] 29 U.S.C. § 411(a)(1), (2), (4) & (5) read:

(a)(1) Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws. [cont.]

[2] 29 U.S.C. § 185(c) reads:

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Plaintiff is a member in good standing of Local Union No. 6, Bricklayers & Allied Craftsmen. Local 6's parent organizations are Defendants Texas Conference and International.

Though a union bricklayer, Plaintiff has not made his living by laying bricks for about 20 years. He is a brick contractor and Chief Executive Officer of the Brick Institute of Texas.

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[1] [cont.] (2) Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(4) Protection of the right to sue.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

(5) Safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

Apparently, Plaintiff hires only union bricklayers so he has not had difficulties because he is a brick contractor.

But his position as the head of the Brick Institute of Texas has created problems. The Brick Institute is a trade organization of brick manufacturers. It, of course, wishes to promote the sale and use of brick construction in the State of Texas, regardless of whether the layers are union or non-union.

In August, 1969, Plaintiff, who was then employed by the Brick Institute, got into a dispute with Bricklayers Union Local No. 9 in Waco, Texas, over the training of non-union bricklayer apprentices. This dispute was ultimately settled by the parties while suit was pending in Federal District Court in Waco.

This incident is important presently only because it goes to show that Plaintiff because of his position with the Brick Institute has had differences with his fellow union members for many years.

In the fall of 1977, Plaintiff was approached to help find a teacher for an apprenticeship class at Skyline High School, Dallas, Texas. Plaintiff agreed to help find a teacher and also agreed to fill in as the teacher (for pay) until a permanent instructor could be found. This apprenticeship class was sponsored by an association of open shop contractors.

On November 3, 1977, Mr. William R. Shrum, Business Manager of Defendant Local 5, observed Plaintiff at Skyline High School where he was teaching the open shop class. Mr. Shrum subsequently charged Plaintiff with a violation of Code 5, Code of International Offenses, Paragraph 1(s) of the Constitution of Defendant International. Code 5(1)(s) provides:

> (1) It shall be an offense against the International Union:

> . . . (s) For any member or affiliate to commit any act which is seriously detrimental to the interests of the International.

A trial was subsequently held on November 30, 1977, by Defendant Local No. 5. Just what happened at that trial is subject to dispute but is clear that Plaintiff admitted that he was teaching the open shop apprenticeship class on November 3, 1977. He was found guilty and fined $250. A tape recording of that trial was made but that tape was subsequently erased.

Plaintiff was formally notified of the guilty decision and the fine of $250 in a letter from Mr. Shrum dated December 1, 1977. Plaintiff then paid his fine under protest by a check dated December 15, 1977.

On December 23, 1977, Plaintiff sent a letter to Mr. Y. C. O'Glee, President of Defendant State Conference, that stated that the appeal procedures were not clear to him and asking for guidance. He received his answer in a letter from Mr. O'Glee, dated January 9, 1978, to the financial secretary of Bricklayers Local 6 which was also sent to Plaintiff. That letter informed Plaintiff that he had to pay his fine under protest and appeal within 30 days from his trial date. Though Plaintiff was past the 30-day mark, both Defendant State Conference and Defendant International accepted his appeals, in turn. It goes without saying since this suit was filed that his appeals were denied.

As no appeal had been received within the 30-day period, Mr. Shrum had erased the tape before the appeal was filed. Defendant Local 5 has maintained throughout that Plaintiff never exhausted his union remedies because of his late appeal. This might have been a viable argument had not the other Defendants heard the appeals.

Plaintiff complains that his rights under 29 U.S.C. § 411(a)(5)(C) have been violated because he was not

provided a transcript of his trial. Though it would be best if a transcript were available, there has been no showing of any fault on the part of any Defendant for the failure of Plaintiff to receive a transcript. If anything, the unavailability of a transcript was caused by Plaintiff's confusion as to appeal procedures which are set out in Code 6 of the Constitution of Defendant International.[3]

Plaintiff contends that that hearing was not "a full and fair hearing" as required by 29 U.S.C. § 411(a)(5)(C). There were substantial differences in the accounts of the Defendant Local 5 trial between Plaintiff and the witnesses presented by the Plaintiff [sic]. One of the chief complaints of Plaintiff is that Mr. Shrum was present at the trial. But Code 6(2)(f)(i) of Defendant International requires the presence of the charging party at a subsequent trial.

Plaintiff's real complaint about the conduct of the trial is the same complaint under 29 U.S.C. § 411(a)(5)(A) that he has about the written charge upon which he was tried and his complaint under 29 U.S.C. § 411(a)(2) that his Right of Free Speech has been violated by the Defendants.

Plaintiff has the view (which coincides with the Brick Institute's view) that anyone who shows an interest in bricklaying should be allowed to become a fully trained journeyman bricklayer. This, to say the least, is not the view of his co-unionists. As would seem natural, they believe that the number of bricklayers be limited to ensure full employment for the present bricklayers, whom they prefer to be union bricklayers. With this in mind, the

[3] Code 6(3)(C)(i) provides:

> A charged or charging party wishing to appeal must file a notice of appeal by registered or certified mail within 30 days from a trial body's or appellate body's written notice of decision. A copy of the notice of appeal shall be sent by registered or certified mail to the opposing party.

position of Defendants has been and is that there should only be one apprentice for each three journeymen bricklayers. As a corollary of this, Defendants position is that apprenticeship programs should be run under the union's apprenticeship program so that the graduates will be (1) limited in number and (2) union members.

The testimony of Defendants' witnesses was that union members are not allowed to teach apprenticeship classes that are not sanctioned by the union. Plaintiff disputed this by way of the example of a union member who was teaching a non-union sanctioned bricklaying class in a public high school. Defendants witnesses rebutted that this was not an apprenticeship class which qualified a person to be a bricklayer. This testimony was not substantially rebutted. So Plaintiff's equal rights challenge under 29 U.S.C. § 411(a)(1) must fail.

There was no testimony at the trial before this Court to the effect that this equal rights defense was presented by Plaintiff at Defendant Local 5's trial.

Apparently, when Plaintiff showed up for the union trial, he readily admitted that he had taught the apprenticeship class on November 3, 1977, that was sponsored by an association of open shop contractors and not by the union. There were vast differences in the testimony before the Court as to what then happened at the union trial. But all witnesses were in agreement that no further testimony was taken.

Now, we have come down to the rub in this case. Plaintiff contends that the written charge filed by Mr. Shrum should have spelled out just how his conduct was "seriously detrimental to the interests of the International," and that testimony should have been presented at his union trial which would show the serious detriment to the union. He also contends that this provision of Defendant Union's Constitution is vague and overbroad.

As the Fifth Circuit pointed out in *Davis v. Williams*, 617 F.2d 1100, 1103 (1980), cert. den. 449 U.S. 937, 101 S.Ct. 336, 66 L.Ed.2d 160, vagueness is a due process consideration and overbreadth is a first amendment ground consideration and they do overlap. In *Davis*, the Fifth Circuit found that a review of provisions such as "seriously detrimental to the interests of the International, supra," entails "meticulous analysis and balancing" which that Court preferred to leave to the Supreme Court.[4]

The Supreme Court spoke as to these matters quite clearly in *Boilermakers v. Hardeman*, 401 U.S. 233, 91 S.Ct. 609, 28 L.Ed.2d. 10. The Court said that it was up to the unions, not the Courts, to define the conduct which would lead to disciplinary conduct. In *Hardeman*, the Court approved a charge that specified the provision with which Mr. Hardeman was charged and a statement of the facts of the incident that led to the charge upon which Mr. Hardeman was tried. The Court found that this was all that 29 U.S.C. § 411(a)(5) requires.

Mr. Shrum's charge both recited the provision of Defendant International's Constitution which Shrum was charging Plaintiff had violated and the facts of the incident involved. So the charge was in accord with Federal law.

That leaves us with the question of what testimony had to be presented at Plaintiff's trial for a finding of guilt to be proper. Plaintiff maintains that explicit evidence that would tend to show that his teaching of an open shop apprenticeship class was "seriously detrimental" to the interests of Defendant International. Defendants demur. Here we are back to Plaintiff's long standing dispute with his co-unionists.

It is apparent from reading the Supreme Court's opinion in *Hardeman*, supra, that no evidence was presented at

[4] Supra, p. 1104.

Mr. Hardeman's union trial other than testimony concerning the facts and circumstances of the incident involved. This would seem to be true in the usual case and ordinarily end our inquiry.

In the present case, Plaintiff has raised a free speech claim under 29 U.S.C. § 411(a)(2). His claim is, essentially, that the charge trial and $250 fine have been used in an attempt to silence what he considers to be his opposition to the viewpoint espoused by the part of his union that is in control of the union offices. The Court will not, on the whole, get into this squabble. Plaintiff does not claim that any officer of any local, Defendant Conference or Defendant International was not duly elected. So the only assumption that can be made is that the officers speak for the membership.

Plaintiff's contention is not so much that he did not know that the Defendants would look upon his teaching an open shop apprenticeship class with such disfavor as it is that he disagrees with their position and has the right to espouse his disagreement.

Undoubtedly, he has a right to voice his opinions either verbally, in writing or through symbolic acts.

The Fifth Circuit has held that the free speech rights of union members may be limited in three ways. Those three are:

> (1) Reasonable rules pertaining to conduct of meetings; (2) reasonable rules as to the responsibility of every member toward the union as an institution; and (3) reasonable rules requiring members to refrain from conduct interfering with the union's performance of its legal contractual obligations.[1]

The second listed limitation is the one pertinent to our inquiry.

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[1] *Airline Maintenance Lodge 702, I.A.M. & A.W. v. Loudermilk*, 444 F.2d 719, 721 (1971).

*Airline Maintenance Lodge 702 v. Loudermilk*,[6] is the case cited by Plaintiff that is the closest to his own situation as far as "reasonable rules" go.

In *Airline Maintenance Lodge 702 v. Loudermilk*, the union had fined Mr. Loudermilk for joining and becoming president of a rival union. The Fifth Circuit said that this was improper though the union could have legally expelled him. Mr. Loudermilk's situation was that he was an employee of an airline which had a union shop agreement with the union that had fined him. The union shop provision of that contract was allowed by § 2 Eleventh of the Railway Labor Act, 45 U.S.C. § 152 Eleventh.[7] The Fifth Circuit's reasoning was that Mr. Loudermilk had been compelled to join Airline Maintenance Lodge 702 which he was trying to replace with another union and that this had free speech overtones so the fine was improper. The difference between the fine imposed and the expulsion that could have been imposed was the last part of § 2 Eleventh which says, in essence, that Mr. Loudermilk could have kept his job with the airline if he had been

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[6] Ibid.

[7] 2. Eleventh. Notwithstanding any other provisions of this chapter, * * * any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of employment, that within sixty days following the beginning of such employment * * * all employees shall become members of the labor organization representing their craft or class: *Provided*, that no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employees to tender periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

expelled for joining another union and becoming its president. So explusion would have harmed him not, where the fine harmed him economically.

Plaintiff's situation is far different. He does not lay bricks for a living. There is no showing that the Brick Institute of Texas requires him to be a member of any union, let alone Defendant International. No evidence has been presented that Plaintiff's entry into the union was anything other than completely voluntary. Lastly, Plaintiff is a resident of a "Right to Work" state[1] and not covered by a law such as the Railway Labor Act, 45 U.S.C.A. § 152 Eleventh which allows union shops.

This lack of coercive membership tips the balance in favor of the Defendants. Plaintiff's conduct in teaching the open shop apprenticeship class may have had some free speech elements in it. But there has been no showing that Plaintiff undertook to teach that class for any reason other than to maintain good relations with members of the industry because of his position with the Brick Institute of Texas.[2]

In summation, procedurally, Plaintiff's union trial could have been handled better by Defendant Local 5. Assumably, a new trial could be ordered to clear up any inadequacies in procedure. But in light of the burdens of going forward with evidence and proof that are required and Plaintiff's willing admission to have taught the open shop apprenticeship class as charged, the result would not differ. Therefore, judgment will be entered for the Defendants.

/s/ W. M. TAYLOR, JR.
*United States District Judge*

DATE: January 28, 1982

[1] Vernon's Ann. Civ. St. Art. 5207a.

[2] Apparently, Plaintiff was paid for teaching the class but did not appear to be much of a motivation as Plaintiff was only supposed to teach until another qualified instructor was found.

**3. Order on Petition for Panel Rehearing**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

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No. 82-1127

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DON HALSELL,

*Plaintiff-Appellant,*

versus

LOCAL UNION NO. 5
BRICKLAYERS & ALLIED CRAFTSMEN, ET AL.,

*Defendants-Appellees.*

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**Appeal from the United States District Court for the Northern District of Texas**

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**ON PETITION FOR REHEARING**

(June 1, 1983)

Before CLARK, Chief Judge, GOLDBERG and POLITZ, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ CHARLES CLARK
*Chief Judge*